IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.210 OF 2005

Shri.Vijaykumar Shivputrappa Dhopre ..Petitioner

Vs.

Shri.Parmeshwar Chandramppa Pomaji and Anr. ..Respondents

....

Mr.Sandesh D.Patil for Petitioner
Mr.M.H.Solkar AGP for State
Mr.Nitin Jamdar for Respondent No.1

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CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 6,2005

P.C.:

1. Heard Mr.Sandesh Patil, the learned counsel for the Petitioner who was a Sarpanch of village Panchayat Wagdari during the three different tenures i.e. i) 1991-93, ii) 2.11.1994 to 12.9.1999 and iii) 2.11.1999 onwards till the impugned order was passed by the Collector on 17.1.2004.

2. The Block Development Officer, Panchayat Samiti Akkalkot on behalf of Chief Executive Officer, Zilla Parishad Solapur and on his behalf submitted Gram Panchayat Dispute Application No. 35 of 2003 to the Collector Solapur seeking disqualification of the

Petitioner under Section 14(1)(g) of the Bombay Village Panchayats Act 1958 (for short 'the Act') and the said application was allowed by the Collector vide his judgment and order dated 17.1.2004. The Petitioner filed Appeal No. 5 of 2004 before the Divisional Commissioner at Pune against the said order passed by the Additional Collector and the Appeal came to be dismissed by the Additional Commissioner, Pune Division on 21.12.2004. Hence, this petition. Section 14(1)(g) of the Act reads as under:

> . "No person shall be a member of the Panchayat and continue as such, who-
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> . has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the Panchayat or under any contract with, by or on behalf of, or employer with or under, the Panchayat".

3. The Block Development Officer had stated before the Collector that the Petitioner while he was holding the post of Sarpanch during the period from 1990-1995 had withdrawn an amount of Rs.1,78,188/- from the village panchayat funds and out of the same amount, he had disbursed an amount of Rs.91,260/- for the construction work completed but the valuation of the construction work was not done and remaining amount of Rs.86,926/- was retained by the Petitioner

with him. Objection to this effect was raised under Section 140 in the Audit Report and it was submitted to the Zilla Parishad for an appropriate action. The construction was under the Jawahar Rojgar Yojana and in the meeting held of the Gram Sabha on 13.5.1992, resolution No.11 was passed in respect the subject construction work. After assessing the entire record and the vouchers of advance received as well as payments distributed on various occasions, the Additional Collector, in his judgment dated 17.1.2004 noted that the amount was received by the Petitioner inasmuch as he had withdrawn the same amount and he had disbursed partly. The record also showed that it was the Petitioner who had undertaken the construction work and thus, his acts squarely came within the purview of clause (g) of Section 14 of the Act. The findings recorded by the Additional Collector, have been confirmed by the Additional Commissioner, Pune Division on perusal of the record. These concurrent findings do not call for any interference in a petition under Article 227 of the Constitution of India as the said findings do not suffer an error apparent on the face of the record. However, in the operative part of the order passed by the Additional Collector, it has been noted that the petitioner is guilty of misappropriation of amount of Rs.86,928/-, this observation is contrary to the facts as noted in the judgment of the Additional

Collector. There is no doubt that the Petitioner sustained disqualification under Section 14(1)(g) of the Act, but at the same time, it cannot be accepted that he was guilty of misappropriation of Rs.86,928/-. Clause (g) of Section 14(1) does not deal with a case of misappropriation and therefore, to that extent, the order of the Collector will have to be corrected and thus stands corrected.

4. Hence, the petition stands rejected subject to the above corrections. However, the clarification as stated hereinabove, would not come in the way of the concerned authorities to proceed against the Petitioner in appropriate proceedings if so permissible in law.

[B.H.MARLAPALLE,J.]